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No. 82-842

IN THE SUPREME COURT OF THE UNITED STATES

JAMES D. RAY, PETITIONER

v.

THE TENNESSEE VALLEY AUTHORITY, ET AL.

RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

(1) Does Tennessee Valley Authority's (TVA's) "sue and be sued" clause in charter and exemption from Tort Claims Act's defamasuit exemption require less stringent standards than the "stigma plus" of Paul v. Davis in a defamation action so that Kiefer & Kiefer v. RFC standards still apply to TVA?

(2) Is violation of an employment contract with TVA a separate cause of action from a Federal Equal Employment Opportunity complaint? If so, does TVA's "sue and be sued" clause allow Federal Court jurisdiction?

(3) Does District Court's finding that Civil Service Commission's (CSC'S) finding that reduction-in-force (RIF) of Veterans' Preference Eligible was proper allow rejection of jurisdiction of violations of reemployment rights that occurred after the CSC's decision? If not, do the McKart exhaustion of administrative remedies requirements, Brown v. GSA, and CSC regulation (just diligence) preclude a one year statute of limitations of reemployment

right violations?

(4) Does uniformity in federal policy require that federal court have equitable jurisdiction over a malpractice claim against attorney appointed under Equal Employment Opportunity Act of 1972 in a Federal employment case?

(5) Is 1974 decision of district court void for lack of due process of law, and, or limited to those things actually tried that were limited by Brown v. GSA to those claims in the administrative record?

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OPINIONS BELOW

The final order granting the Tennessee Valley Authority's Motion For Summary Judgment and Memorandum Opinion of the District Court, both entered on Feb. 17, 1981; and the decision of the 11th Circuit of June 4, 1982, rehearing denied August 3, 1982, which is reported at 677 F.2d 818 (11th Cir. 1982) appear in the appendix (A-32-39 and A-1-31 respectively).

The motion to dismiss of Jack Drake was granted without opinion.

JURISDICTION

The Judgment of the Court of Appeals for the 11th Circuit was made and entered on June 4, 1982, and a petition for rehearing and suggestion for rehearing en banc was denied on August 3, 1982, and a copy of the judgment is appended to this petition in the Appendix. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are entirely ones involving the district court's jurisdiction over three interrelated claims: (a) An allegation that a TVA budget officer's statement with reference to petitioner's reduction-in-force (RIF) in 1973 that "Hell, they fired Jim Ray -- he is the only one at the management level I can think of that they ever fired in the OACD." constituted slander per se or else was evidence that the 1973 RIF was fraudulent. (b) An allegation that the attorney appointed by the district court to represent petitioner in his 1974 Equal Employment Opportunity Act (EEO Act) of 1972 complaint was guilty of malpractice in withdrawing without doing a single thing in aid of the plaintiff. This, combined with the fact that the court subsequently granted summary judgment for defendant TVA's board of directors without notice that another attorney would not be appointed and without the 10 day notice

requirement that the motion to dismiss would be converted to summary judgment was urged by petitioner to show that the court's 1974 summary judgment (that was not accompanied by an entry of a final judgment on a separate document) was void for lack of due process of law. (c) Petitioner, who is a Veterans' Preference Eligible alleged violation of his employment contract with TVA which ran from January to January on an annual basis, while his employment was terminated on March 30, 1973. Petitioner pursued all of the administrative remedies that were offered to him and finally, in the instant action has pursued his contract rights. In a highly convoluted fashion, the district court has mixed this up with the EEO Act of 1972 claims, his Veterans' Preference Eligible rights to reemployment (which the S.Ct. has held are an integral part of the due process rights involved in a RIF) and held that the 1974 summary judgment was res judicata to the instant claim. The court of appeals affir-

med summary judgment for TVA and Briglia, the budget officer, as well as dismissal of the malpractice claim.

The questions presented for review are:

(1) Does Tennessee Valley Authority's (TVA) "sue and be sued" clause in charter and exemption from Tort Claims Act's defamation suit exemption require less stringent standards than the "stigma plus" of Paul v. Davis in a defamation action so that Kiefer & Kiefer v. RFC standards still apply to TVA?

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If not, do the McKart exhaustion of administrative remedies requirements, Brown v. GSA, and CSC regulation (just diligence) preclude a one year statute of limitations of reemployment right violations?

(4) Does uniformity in federal policy require that federal court have equitable jurisdiction over a malpractice claim against attorney appointed under Equal Employment Opportunity Act of 1972 in a Federal employment case?

(5) Is 1974 decision of district court void for lack of due process of law, and, or limited to those things actually tried that were limited by Brown v. GSA to those claims in the administrative record?

STATEMENT OF THE CASE

Jurisdiction of District Court

Jurisdiction of the District Court is based on the claims being ancillary, pendant and supplementary to those in Ray v. Tennessee Valley Authority, CA 74-G-601-NW, filed June

20, 1974; 28 U.S.C. §§§1331, 1337, 1342; 42 U.S.C. §§§2000e-5(f)(1)-(3), 2000e-11, 2000e-16(c); deprivation of liberty and property rights under the 5th Amendment of the Constitution; and the right to be free from defamatory statements which are not tolerated under the freedom of speech clause of the 1st Amendment of the Constitution; and to seek damages in suing the Tennessee Valley Authority for violation of contract and for defamation under 16 U.S.C.§831(c)(b) which, since the TVA is exempted from the "ort Claims Act by 5 U.S.C. §2680 (1)(the letter "ell") confers jurisdiction on the district court over petitioners claims under the State of Alabama laws of defamation, and unlawful trade practices, Code of Alabama §§§§6-2-34, 6-5-180, 6-5-182, 6-5-183, Code of Alabama, 1975§§§8-10-3, 8-19-5, 8-19-6, Code of Alabama, 1975 §13A-11-163, Code of Alabama, 1975 §25-7-9 and the Alabama Constitution of 1901, Art. 1, Sec. 13, the analogue of the Federal Constitution's 5th

Amendment, but which exceeds the 5th Amendment in also proscribing injury to one's reputation without due process of law.

Jurisdiction over Attorney Jack Drake is based on the malpractice claim being ancillary, pendant and supplementary to the EEO Act of 1972 under which he was appointed as authorized in 42 U.S.C.§2000e-5(f)(1) and that public policy requires a nationwide uniformity of standards of practice by attorneys so appointed, so that the Court's inherent powers require that Alabama Code of 1958 §7-21; Alabama Code, 1975 §6-2-34(4) and (8) governing the 6-year limitations period for malpractice claims be tried in a federal court with that limitations period.

Course of Proceedings Below

Petitioner Ray in 1973 was terminated from his employment with TVA by what was stated to be a reduction-in-force (RIF which was subject to the regulations of the former Civil Service Commission under the Veterans' Preference Act

of 1944. The limited scope of review of that action is listed in the Federal Personnel Manual, Chap 351, Appendix D-2 (A-48-49) The actual issues considered by the Civil Service Commission in the decision of the Board of Appeals and Review (A-43-45) did not include questioning the TVA's reason for the RIF, i.e., whether TVA's stated "budget reasons" (R.Exc. p. 45 lines 3-6) was true, whether Ray's employment contract was violated, (Congress had approved the budget of TVA that included Ray's salary through June of 1973), or address violations of Ray's reemployment rights. The subsequent complaint in the district court and the associated claim of discrimination in employment based on Ray's religious beliefs, Ray v. Tennessee Valley Authority, CA 74-G-601-NW, June 20, 1974 (A40-42) preceeded the Supreme Court's decision in Chandler v. Roudebush, 96 S.Ct. 1914 (1976) that a trial de novo is required in EEO cases, and thus the case was disposed of without an adverserial trial, but

only on review of the administrative record. No judgment on a separate document was made. There was no representation by counsel -- the court had appointed Mr. Jack Drake of Tuscaloosa, Ala. to represent Ray, but Mr. Drake petitioned the court to withdraw and was allowed to do so. Then without giving any notice that another attorney would not be appointed, as the district court's Order (A-40-42) shows was the plan, the court granted summary judgment to TVA defendants. An appeal was dismissed as untimely, Ray v. Tennessee Valley Authority, 521 F.2d 812 (5th Cir. 1975), cert. denied, 424 U.S. 973 (1976).

Ray's attempt to intervene in the race discrimination suit against TVA, Eastland v. Freeman, No. 73-G-487-NW (N.D.Ala., filed May 21, 1973) was denied on the basis of res judicata, and affirmed in Eastland v. Tennessee Valley Authority, 638 F.2d 1232 (5th Cir. 1981).

Since State of Alabama statutes of limita-

tions on Contract violations and actions against attorneys-at-law for neglect or ommission of duty, Code of Alabama, 1975 §6-2-34(4),(8) (A-49) were running out as well as Alabama's 1 year statute for actions charging defamation, the instant action was commenced.

In October, 1979, Mr. Arnold E. Briglia, the Budget Officer of the Office of Agricultural and Chemical Development (OACD) of the Tennessee Valley Authority stated in the presence of a number of professional chemists (Ray has a PhD in Chemistry from Stanford University) "Hell, they fired Jim Ray -- he is the only one at the management level I can think of that they ever fired in the OACD." That statement of the budget officer (who would better know whether Ray's 1973 RIF was because of "budget reasons") was made with reference to petitioner's RIF by TVA's OACD in 1973, and contradicts TVA's stated "budget reason," or alternatively, if untrue, was a defamatory statement under the

Alabama Constitution of 1901, Art. 1, Sec. 13 and statutes promulgated thereunder. (A-49, et seq.) Ray maintained that since 5 U.S.C. §7512 (A-46, 47) proscribes taking such an "adverse action" against a Veterans' Preference Eligible:

> ...except when there is reasonable cause to believe him guilty of a crime for which a sentence of imprisonment can be imposed...

that Code of Alabama, 1975 §6-5-180 (A-49,50):

> every accusation importing the commission of a crime punishable by indictment must be held presumptively to mean what the language used ordinarily imports.

and Alabama's alternate criminal offense §13A-11-163 are the basis in law for a defamation charge.

Ray in his instant action also alleged that his reemployment rights as a Veterans' Preference Eligible had been totally ignored by TVA. In his reply brief,(R.Exc. p. 40-41) Ray points out the continuing discriminatory systematic nature of this practice.

Three further EEO complaints have been

pursued through TVA and the Equal Employment Opportunity Commission regarding violations of petitioners reemployment rights. These complaints were filed at the times that petitioner first learned of the violations. One of these is the subject of a current complaint in the district court, Ray v. Charles H. Dean, et al., CV82C5239NW, N.D.Ala. filed Apr. 29, 1982).

The district court dismissed Ray's complaint of malpractice against Mr. Drake on Dec. 18, 1980 (R. Exc. p. 22) without opinion. On Feb. 13, 1981 the district court granted summary judgment for defendants TVA, et al. (A32-33) The district court's Memorandum Opinion (A34-39) held that its 1974 opinion rendered res judicata the instant claims of violation of employment contract. The court ignored claims that the 1974 judgment was void. The claim of reemployment rights violations was disposed of by ruling that a one year statute of limitations applied and that these

rights expired in March 1975. The defamation claim was ruled against on the basis that the S.Ct. decision in Paul v. Davis, 424 U.S. 693 (1976) was not based on a constitutional claim, but rather was "a creature of the state's tort law," and since no subject matter jurisdiction existed, the "slander action" must be dismissed for lack of subject matter jurisdiction.

The decision of the district court was affirmed in Ray v. Tennessee Valley Authority, 677 F.2d 818 (1982); rehearing and rehearing en banc denied August 3, 1982 (A-1-31).

The district court ignored the claim of right to collaterally attack its 1974 judgment as being void for lack of due process of law. That claim is made in Count three (R.Exc. p.8) of the Complaint. The more detailed statement of the reasons the district court's 1974 judgment was void for preventing access to due process of law in the taking of liberty and property were before the district court in petitioner's Motion to Intervene in Eastland

v. S. David Freeman, et al CA 73-487 NW, Motion denied May 6, 1980, on appeal 5th Cir. No. 80-7553, Petition denied Feb. 2, 1981, rehearing denied Feb. 2, 1981, at the time of the instant suit. The claim was before the 11th Circuit in the instant case in the supplement to the record on appeal, Brief for Intervenor-Appellant in Eastland v. Freeman, No. 80-7553 (supra) pp 19 thru 21.

PARTIES

Respondents named in the caption on the case are the Tennessee Valley Authority (hereinafter (TVA) as required by TVA's "sue-and-be-sued" clause; S. David Freeman, former chairman of TVA's board of directors, Richard M. Freeman, member of TVA's board of directors, Robert N. Clement, former member of TVA's board of directors, and Arnold T. Briglia, budget officer of TVA's Office of Agricultural and Chemical Development where petitioner was formerly employed. These four individuals are named in both eheir individual and offic-

ial capacities. Also appearing on the Complaint (R.Exc.3) is Jack Drake, the attorney who was appointed under the Equal Employment Opportunity Act of 1972 to represent petitioner in 1974.

ARGUMENT

(1) "Stigma-plus" of Paul v. Davis Inapplicable under TVA's "sue and be sued" clause.

The district court's ruling that it lacked jurisdiction over petitioner's defamation claim was based on the assumption that the TVA could not be sued for a state defined tort claim, and that the evidentiary standards of Paul v. Davis, 424 U.S. 645, 96 S.Ct. 1155, 47 L.Ed. 2d 366 (1976) were not met.

16 U.S.C. 831c of the Tennessee Valley Authority Act of 1933 (A-47):

> Except as otherwise specifically provided in this chapter, the Corporation--
> (b) May sue and be sued in its corporate name.

has no restriction as to suit in any court, State or Federal except with respect to condemnation proceedings which are limited to the

United States district courts, 16 U.S.C. §831x (A-47). Since the TVA is excepted from the provisions of the Tort Claims Act of 1946 with respect to its exception of claims arising out of libel, slander or interference with contract rights, etc., then the TVA is still subject to the standards of Keifer & Keifer v. Reconstruction Finance Corporation, 306 U.S. 381, 59 S.Ct. 516, 83 L.Ed. 784 (1939) in contrast to the other "sue and be sued" federal corporations that are subject to the Tort Claims Act's exceptions. The TVA is responsible for the defamation by its agent Mr. Briglia under Cooper v. Alabama Farm Bureau Mutual Casualty Insurance Company, Inc., 385 So.2d 630 (Ala. S.Ct. June 6, 1980).

This Court has accepted for review the petition of Bush v. Lucas, No. 81-469. The non-exemption of the National Aeronautics and Space Administration in contrast to TVA's exemption from the Tort Claims Act of 1946 points to the desirability that these two

cases be distinguished.

(2) Employment Contract Violation Separate Cause of Action from Federal EEO Complaint? McKart Tolling?

The Court of Appeals has affirmed the district court's ruling that petitioner could not pursue his employment contract violation cause of action separately from his "mixed case" EEO-RIF complaint of 1973 (agency level) and 1974 (district court level). This court in Alexander v. Gardner-Denver Co., 415 U.S. 36, 94 S.Ct. 1011, 1019 n.9, 39 L.Ed.2d 147 (1974) observed:

> "...The report of the Senate Committee responsible for the 1972 Act explained that the "provisions regarding the individual's right to sue under title VII, nor any of the other provisions of this bill, are meant to affect existing rights granted under other laws." S.Rep.No. 92-415, p. 24 (1971).

Relying on that decision, Aleem v. General Felt Industries, 27 FEP Cases 569, 570 (9th Cir. 1981) held that EEO and arbitration complaints could be pursued at different times:

Nor is there any requirement that

Aleem join the two independent claims in one action, even if he could.

Cener v. Marathon Oil Co. 583 F.2d 830 (6th Cir. 1978) held that separate claims under contract and the Age Discrimination in Employment Act could be brought in one suit if grounded on the same nucleus of common operative facts.

The question as to whether in an individual employment contract violation associated with a federal EEO case, the two causes of action may be split into separate lawsuits was not addressed in Alexander (supra), in which a labor union contract was involved, (although the Senate report quoted therein speaks of the individual's rights) and should be settled by this court.

The decision of the Civil Service Commission's Board of Appeals and Review in Ray's 1973 Veterans' Preference appeal (A-43, 3rd par.) did not consider the employment contract question, and under the regulation in the Federal Personnel Manual, Ch. 351, Appendix D-2

(A-48-49) which that decision construed, it could not have.

The district court appears to have misconstrued Commissioner v. Sunnen, 333 U.S. 591, 599-600, 68 S.Ct. 715, 719-720, 92 L.Ed. 898 (1948):

> ...if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case.

The relevant fact in the violation of employment contract claim is that Congress had approved TVA's budget which included Ray's salary through June 30, 1973, and in terminating his employment in March, his January to January employment contract was violated. Since this fact could not be considered by the Civil Service Commission, the claim should not have been dismissed under res judicata doctrine, particularly since the district court proceeding only involved a review of the administrative record.

(3) Whether Veteran's Reemployment Rights Violations were Subject to One Year Statute of Limitations

This Court in Brannan v. Elder, 341 U.S. 27, 71 S.Ct. 685, held that retention-preference (in RIFs) regulations are under §12 while reemployment preferences are under §15 of the Veterans' Preference Act (Prior to the Civil Service Reform Act of 1978 which is not applicable in the instant case, these sections were 5 U.S.C. §§3502 and 3315 respectively) and treated the claims as separate causes of action. After first affirming the Civil Service Commission's finding that Elder's RIF was properly carried out, this Court went on to consider the reemployment rights violation claims. It was held in Rasmussen v. United States, 543 F.2d 134 (Ct.Cl., 1976) (R.Exc. p. 41, and 11th Cir. oral argument):

> ...we have determined that the Board violated a procedural regulation to the plaintiff's detriment. The major procedural lapse vitiated the Board's decision. This in turn invalidated the plaintiff's reduction-in-force since his reassignment rights were an integral part of that

> reduction. The same notice which told him that his position was to be abolished also informed him of * * * rights* * * under Civil Service regulations; and those regulations imposed on the agency specified assignment and "bumping" steps --as well as the procedural steps the employee could take to vindicate his rights. These assignment rights were as important as, perhaps more important than, the validity of the abolishment of the GS-13 job itself. Thus, the failure to accord plaintiff a significant procedural right means that the reduction-in-force cannot be enforced. Cf. 458 F.2d 39, 136 F. Supp. 748.

In Ray's case, the RIF notice (R.Exc. pp-14-15) contained the statement:

> For 2 years after termination you will be given preference for appointment to positions for which you are eligible and request to be placed on the reemployment list.

Ray's case is distinguished from Brannan (supra) in that Ray did ask to have his name placed on the reemployment list (R.Exc. pp 34 and 41) and so met the Brannan v. Elder requirement. But, the district court has denied Ray the right to a hearing on his reemployment rights that Elder was given by the S.Ct. Even worse, the district court has turned Rasmussen (supra) upside down! There, the violation of post RIF rights

such as the reemployment rights in the instant case rendered the RIF itself invalid; but here a finding that the RIF was valid has ruled out pursuit of subsequently discovered reemployment rights violations!

The 11th Circuit affirmation is thus in conflict with decisions of this Court as well as of the Court of Claims, and the issues should be settled by this court.

The one year limitations period invoked by the district court in disposing of petitioner's reemployment right basis for employment contract violation was based on Buckner v. Goodyear Tire & Rubber Co., 339 F.Supp. 1108, 1117-8 (N.D.Ala. 1972) adopted and aff'd, 476 F.2d 1287 (5th Cir. 1973) which found a 1 year limitations period in a 42 U.S.C.§1981 case which did not involve contract rights. Buckner (supra) relied on Sewell v. Grand Lodge of Intern'l Ass'n of Machinists, 445 F.2d 545 F. 2d 545 (5th Cir. 1971) in concluding that the federal law relied on, the Labor Management

Reporting and Disclosure Act of 1959, involved a breach of duty rather than contract. Watkins v. Scott Paper Co. 530 F.2d 1159 (5th Cir. 1976) held:

> Where a statute sets the amount of compensation due an employee, the statute may be read into the employment contract, and a suit for back wages is based upon contract. ···This would be the case under the Fair Labor Standards Act, ··· Title VII provides for back pay, but does not prescribe what that pay shall be. Therefore, Title VII is not to be understood as "implied" in the plaintiffs' employment contracts. The employees' right to back pay arises out of the duty not to discriminate imposed by Title VII, not out of a contract.

In Ray's employment contract (R.Exc. p 11-12), it is the Back Pay Act of 1966, 5 U.S.C §5596 that must be read into the employment contract, since that Act does specify the amount of back pay:

> (b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or

differentials of the employee--

(A) is entitled to correction of the personnel action, to receive for the period for which the personnel action was in effect--

(1) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period;

Congress gave the Civil Service Commission the power to enforce a Veterans' Preference Eligible's reemployment rights through 5 U.S.C. §1302(c) (A-46). No limitations but rather only diligence was required as promulgated in 5 C.F.R. §330.203 (which applies here under the grandfather clause of the Civil Service Reform Act of 1978). It is undisputed that Ray has active appeals before the Equal Employment Opportunity Commission involving violations of his reemployment rights, and that these require application of the equitable "tolling" doctrine.

For these reasons, this Court should settle the question as to whether a Veteran's

reemployment rights are ex contractu or ex delicto.

(4) Malpractice Claim Against EEO Appointed Attorney

The district court rejected jurisdiction over the "malpractice" claim and the court of appeals affirmed.

There are varying cannons of ethics of the State Bar Associations, and varying standards of enforcement thereof. In contrast, the EEO Act of 1972 established a uniform national policy proscribing discrimination in employment. To the extent that an allegation of such discrimination is necessarily pursued by the aid of an attorney appointed under 42 U.S.C.§2000e-5(f)(1) and because of the limited venue imposed by that Act, such uniformity might not follow.

In using the word appoint, the same word that is used in the Criminal Justice Act, rather than "the court may request an attorney" of 28 U.S.C.§1915 applicable to other civil

actions, Congress indicated the seriousness of the Attorney's duty as being equal to that under the 6th Amendment of the Constitution. To require a plaintiff to pursue a separate lawsuit in State court to enforce his rights to due process in an EEO case (with respect to a "malpractice" claim against the appointed attorney appears at variance with the description of congressional intent in Hackley v. Roudebush, 520 F.2d 108, 148 (DC Cir. 1975):

> the right to plenary judicial proceedings was provided to insure that the trumpet did not sound a hollow note. (emphasis supplied)

Beyond the question as to whether the district court had jurisdiction over attorney Jack Drake because of his appointment under the EEO Act of 1972 which the 11th Circuit decided against petitioner, the district court also declined any action allowed under its inherent powers. That rejection is in conflict with decisions of this Court. An attorney appearing before a court is its off-

icer. Cohen v. Hurley 366 U.S. 117, 124, 81 S.Ct. 954, 6 L.Ed.2d 156, 162 (1961). Such an attorney is "...subject to continuing scrutiny by ...the courts. ..." In re Griffiths, 413 U.S. 717, 727, 93 S.Ct. 2851, 2857, 37 L.Ed.2d 910, 918 (1973). The Court possesses "...autonomous control over (his) conduct...." Theard v. United States, 354 U.S. 278, 281, 77 S.Ct. 1274, 1276, 1 L.Ed.2d 1342, 1344 (1957). Ex parte Wall, 107 U.S. 265, 2 S.Ct. 569, 581, 27 L.Ed. 552 (1883) quoted Re Hill, L.R.3Q.B.543:

> I think when we are called upon, in the exercise of our equitable jurisdiction, to order an attorney to perform a contract to pay money, or to fulfill an undertaking, that we have jurisdiction only if the undertaking or the contract is made in his character of attorney, or is so connected with his character of attorney as to bring it within the power of the court to require that their officer shall behave well as an officer.

In re Hill quoted in ex parte Wall (supra) was regarding equitable jurisdiction. The Constitution does not require Congress to confer equity jurisdiction on any particular inferior court. Lockerty v. Phillips, 319 U.S. 182, 63 S.Ct.

1019, 87 L.Ed. 1339 (1943).

At the very least, the court could find jurisdiction under 28 U.S.C §1927 which under the 1980 amendment includes "all persons" in the award of attorney's fees for vexatiously increasing the litigation.

This court should settle the question of jurisdiction over attorneys appointed under the EEO Act of 1972.

(5) Is the 1974 Decision of the District Court Void for lack of Due Process of Law?

The district court's 1974 judgment (A-40-42) is void for lack of due process of law since no final judgment on a separate document was entered. Ray, a pro-se plaintiff without legal training was thus case in precisely the role that Bankers Trust Co. v. Mallis, 435 U.S. 381, 98 S.Ct. 1117, 55 L.Ed.2d 357 (1978) describes, with the result that his appeal was dismissed as untimely.

Since no notice was given that another attorney would not be appointed after the

withdrawal of Mr. Jack Drake, (this was admitted by Mr. Drake at the 11th Circuit oral argument), then the court had no jurisdiction in any case to proceed to judgment. Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897).

The withdrawal of Mr. Jack Drake as appointed attorney without his having done a single thing in aid of Ray's cause denied Ray due process of law.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for writ of certiorari should be granted.

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